

APPEAL NO. 031542
FILED JULY 24, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 1, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th quarter. The claimant appealed, and the respondent (carrier) responded.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the 12th quarter. The qualifying period for the 12th quarter was from November 28, 2002, through February 26, 2003.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

A medical report from February 2002, concluded that the claimant is capable of sedentary to light work. The claimant documented a total of 19 job searches from November 28, 2002, through January 31, 2003. The claimant documented no job searches for the last 26 days of the qualifying period. The claimant contended that he had no ability to work during those 26 days, first due to bronchitis for two weeks, and later due to a knee injury on February 15, 2003, which he contended resulted from a fall due to back spasms from his compensable injury. The hearing officer found that the claimant's job search during December 2002, and January 2003, was structured to qualify for SIBs, and not to find employment; that the claimant had some ability to work a sedentary or light job; and that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the 12th quarter. The hearing officer concluded that the claimant is not entitled to SIBs for the 12th quarter.

The hearing officer makes clear in his decision that he found the claimant's documentation of an illness (bronchitis) for two weeks, for which the claimant was in the hospital for one day and for which his doctor made a notation of bedrest, to be inadequate. In Texas Workers' Compensation Commission Appeal No. 001877, decided September 19, 2000, the Appeals Panel noted that while an injured employee may change status (from having an ability to work to having no ability to work) during a qualifying period, the change in status must meet the requirement of Rule 130.102 for the specific period involved. Texas Workers' Compensation Commission Appeal No. 000835, decided June 5, 2000, cited the preamble to Rule 130.102(d)(3) (the no-ability-to-work provision effective January 31, 1999, that was renumbered as Rule 130.102(d)(4) effective November 28, 1999), which noted that the good faith, no-ability-to-work provision should be a limited situation and only applies where it is clear that the injured employee cannot return to work because of the compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the 12th quarter is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Credit General Indemnity, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLEY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge